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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1949

No. 572

IRVIN WINKLER, STANLEY ASKIN, HAROLD BUCHMAN, LEONARD COLLIDGE, WARREN L. VESTAL, REGINA SILVERBERG and CHARLES M. SWANN,
Petitioners,

vs.

STATE OF MARYLAND,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND AND BRIEF IN SUPPORT OF PETITION

I. DUKE AVNET,
EDGAR PAUL BOYKO,
HAROLD BUCHMAN,
MITCHELL A. DUBOW,
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The Daily Record Co., Baltimore 3, Md.

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IRVIN WINKLER, STANLEY ASKIN, HAROLD BUCHMAN, LEONARD COLLIDGE, WARREN L. VESTAL, REGINA SILVERBERG and CHARLES M. SWANN,
Petitioners,

vs.

STATE OF MARYLAND,
Respondent.

PETITION FOR WRIT OF CERTIORARI

The petitioners, Irvin Winkler, Stanley Askin, Harold Buchman, Leonard Collidge, Warren L. Vestal, Regina Silverberg and Charles M. Swann, respectfully petition this Honorable Court for a Writ of Certiorari to the Court of Appeals of Maryland.

STATEMENT OF THE MATTER INVOLVED

This case presents the important question whether white and Negro citizens who wish to and who voluntarily engage in sports activity together in the public parks may be forcibly prevented from doing so by governmental officials solely because of the color of the skin of the sport participants.

Another question which is presented, but as serious in character, is whether persons may assemble and protest against such acts by governmental officials restricting voluntary association, and whether they may invite the public by circulars and word of mouth to join with them in this protest.

This case, now popularly known as "The Tennis Court Case", has assumed national and even international significance and has brought into sharp focus the challenge to our courts whether voluntary interracial sports activity by the Negro and white races can be interdicted, in our time, in consonance with our constitutional guarantees of freedom.

The State of Maryland, in a disingenuous attempt to evade the real issue, employed the ancient weapon of criminal conspiracy to secure a conviction against the white petitioners who dared to play tennis with Negro citizens on public tennis courts in Baltimore City. By this action, described in his dissent by Associate Judge Charles Markell, of the Court of Appeals of Maryland, as "a sham, belatedly devised to obtain and cover a conviction for exercising constitutional rights", the State made criminal the exercise of the constitutional rights of freedom of assembly, and of speech and press.

The petitioners were originally convicted of conspiracy to disturb the peace and for riot in connection with an interracial tennis tournament staged in Druid Hill Park, a public park in Baltimore City, on July 11, 1948.

The Young Progressives of Maryland, an interracial organization, had attempted to secure permission from the Park Board of Baltimore, the agency supervising the public parks, to use courts for interracial matches, but permission was denied. The refusal was not based, admittedly, on

any statute, ordinance, or rule of the Board, but solely on a notation in the minutes of one of the meetings of the Park Board forbidding interracial sports activity. This minute, was never introduced in evidence at the trial.

The Young Progressives, in conjunction with the Baltimore Tennis Club, a Negro organization, determined to proceed with their plan to conduct the tennis tournament, after securing legal advice. Leaflets were distributed advertising the tournament and inviting the public to attend; the press was notified, and plans were made to test the Park Board "policy" by submitting to arrest peaceably if ordered to desist from play. Permits to play on the courts were duly obtained and play began in an orderly manner until, following refusal to quit the courts upon order of the park police, the city police were summoned and some 22 persons were arrested for violation of park rules.

Approximately 150 persons witnessed the matches and arrests. No disorders occurred beyond verbal protests made by some spectators. No resistance to the arrests was made. One participant, who claimed that he would not leave the courts until placed under arrest, was carried off bodily. Five of those subsequently indicted had been spectators at the matches.

Six of the petitioners were originally indicted for violation of the park rules which merely required obedience to an order of the park police on pain of a small fine. However, two months later, when conviction on these grounds appeared dubious because of the vagueness and questionable legality of the Park Board's "policy", new indictments were returned, adding Harold Buchman, an attorney, as a defendant and accusing the seven petitioners of conspiracy to disturb the peace, riot and numerous other charges.

The trial revealed rather fantastic embellishments of the actual occurrences but still did not alter the substantial facts recited, or furnish any evidence of riot, disorderly conduct or disturbance of the peace. The petitioners were convicted of riot and conspiracy to disturb the peace.

In decision and sentences, the Court, sitting as a jury, expressed his sentiments in unvarnished political bias and intemperate remarks, to the extent of accusing petitioners of misleading the Negro participants. The sentences imposed on petitioners ranged from three to eighteen months in the House of Correction, with fines up to fifty dollars. The sentences were suspended, but the petitioners were placed under maximum probation of two years.

Subsequently, on motion for a new trial, a new trial was granted by the Supreme Bench of Baltimore City on the riot conviction, but the lower court was affirmed by a divided Supreme Bench in its conviction for conspiracy to disturb the peace. None of the petitioners, all of whom are white, was convicted of actually disturbing the peace or of disorderly conduct.

There was uncontradicted testimony that interracial activity in many different sports in public facilities in Baltimore City, under the supervision and control of the same Park Board, is frequent and accepted. It was further uncontradicted that interracial sports activity in the city generally, in both the amateur and professional fields, is the accepted pattern and rule. It was stipulated by the State and the Defendants that of ten public parks distributed in different geographical locations in Baltimore City having tennis courts, the Park Board has reserved nine for whites and only one for colored persons — the latter being located in Druid Hill Park. It was further stipulated that the Park Board has reserved 108 courts

for whites and only eight for colored persons. In proportion to population this means that less than 7% of the courts were reserved for colored persons as compared with those reserved for whites. The colored population in Baltimore City is roughly 20% of the total.

The Maryland Court of Appeals, the highest appellate tribunal in Maryland, affirmed the lower court on the ground that under its precedents it was powerless to review the facts and law in a criminal case. Judge Charles Markell, an associate judge, delivered a vigorous dissent, declaring that the petitioners were guilty of no offense and were convicted of exercising their constitutional rights.

THIS COURT HAS JURISDICTION

This Court has jurisdiction under the Judicial Code (U. S. Code, Annotated, Title 28, Sec. 1257 (3)). The Court of Appeals of Maryland decided this case on November 17, 1949, and stayed its mandate to February 1, 1950, pending filing of petition for writ of certiorari, or until completion by the Supreme Court of consideration of this cause.

THE QUESTIONS PRESENTED

I. Were the constitutional rights of the petitioners under the First and Fourteenth Amendments to the Federal Constitution abridged by their arrest and conviction on the charge of criminal conspiracy to disturb the peace:

A. because of their act in playing interracial tennis on a public park tennis court in the City of Baltimore, in the face of an alleged ban by officials of the City of Baltimore against such interracial activity, and

B. because of their acts in assembling to protest the alleged ban and in inviting the public by circulars and word of mouth to assemble for this purpose?

II. Did the Court of Appeals of Maryland err in its refusal to determine if the constitutional rights asserted by the petitioners had been violated, and in its refusal to examine the facts and law to make such a determination?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

The Fourteenth Amendment guarantees to the citizens of the states the right to assemble, in its due process clause. The Fourteenth Amendment has been held by this Court to incorporate in its due process clause the guarantees of the First Amendment. *Schneider v. State*, 308 U. S. 147, 160. *DeJonge v. Oregon*, 299 U. S. 353. The right of freedom of assembly is cognate to other freedoms embraced in the First Amendment. This Court has been zealous to protect the rights of citizens of the states to use the public parks where same were forbidden to them by city authorities because of alleged undesirable political and social views. *Hague v. C. I. O.*, 101 F. 2d 774, modified on other grounds, 307 U. S. 496. See also *Sellers v. Johnson*, 163 F. 2d 877. In the present case, the Petitioners were exercising an act of assembly in Druid Hill Park in Baltimore City. The act of meeting at the park to protest against the alleged ban of the city officials against the interracial tennis tournament, was an act of assembly, and the act of playing the sport together on the tennis courts was also an act of assembly. The fact that it was recreational does not make it any the less an assemblage within the meaning of the First Amendment. Any other construction would narrow and emasculate the meaning of freedom of assembly in the Bill of Rights. The

act by the city officials of preventing this tennis tournament because of the mixed racial character of the group was strikingly analogous to the act of the city officials in the case of *Hague v. C. I. O., supra,* where it was sought to prevent the assemblage because of the disapproval of the political and social views of the individuals involved. The tennis tournament and the presence of the spectators was a voluntary peaceable assemblage and not one to commit a crime.

This case differs radically from the factual situations presented to this Court in the usual so-called segregation cases. In the latter group there is presented the factual scene of Negroes demanding equal facilities within the framework of the separate but equal doctrine of *Plessy v. Ferguson,* 163 U. S. 537. In "The Tennis Court Case" we have an entirely different case history and that is, white and Negro citizens demanding the right to voluntarily associate together in sports activity on public facilities. In the so-called segregation cases, above referred to, the right of voluntary freedom of association by members of both races is not presented; in this case it is. This poses, therefore, a new constitutional question in the application of the First Amendment freedoms in the field of race relations. That is why the case at bar has attracted widespread national and international attention. The implications of the questions involved far transcend the confines of this immediate petition. In an age where caste and race as a basis for imposing inferior status are recognized as relics of a barbaric and fading past, where internal and international demands make continuation of discrimination intolerable, the State of Maryland insists that members of the Negro and white races can use public recreational facilities voluntarily together only on pain of conviction as criminal conspirators.

And this is true even if there is no visible ban on such joint use. For it was admitted by the State that there exists no statute, no ordinance nor even a rule in a printed rule book of the Park Board of Baltimore which creates such a barrier. Nor was there even shown a consistent unwritten "policy" of segregation in sports in Druid Hill Park or in Baltimore City itself. Only loose reference to a notation in the minutes of one of the meetings of the Board was given as the basis for discrimination. But the notation was not even submitted in evidence! This Court has already held that a statute affecting civil liberties must be even more definite in its meaning than other types of laws. *Winters v. N. Y.*, 333 U. S. 507; *Stromberg v. Calif.*, 283 U. S. 359; *Herndon v. Lowry*, 301 U. S. 242. Certainly, this stringent standard has not been complied with by the Park Board of Baltimore City. The prosecution for the use of the tennis courts by the Petitioners, therefore, was based on the arbitrary, ad hoc, determination of bureaucratic officialdom, whose caprice and racial bigotry have become the foundation for criminal prosecution. It is not surprising, therefore, that the State seized upon the sweeping charge of conspiracy to rescue itself from a dilemma.

There can be no question, furthermore, that the tennis facilities for Negro persons are unequal to those available for white citizens. There is a serious deficiency in the number of tennis courts set aside for members of the colored race in Baltimore City, and no consideration was given to geographical convenience. It cannot be argued therefore that the tennis court facilities provided for the Negro race, although separate, were equal, and thus there could have been no possible legal justification for separation of the races on these facilities. See *Plessy v. Ferguson*, 163 U. S. 537. The arrests and convictions made in pursuance of this

invalid "rule" must therefore fall. See *Morgan v. Virginia*, 328 U. S. 373, 376; *Thomas v. Collins*, 323 U. S. 516.

Petitioners further contend that even if the Court were to hold that the facilities provided were equal, segregation in the field of sports in public facilities is unconstitutional. *Lopez v. Seccombe, Mayor of the City of San Bernardino, et al.*, 71 F. S. 769. Recent and past decisions of the U. S. Supreme Court have dealt the institution of segregation very severe blows, and the present currents of our jurisprudence make its continuation legally untenable. *Buchanan v. Warley*, 245 U. S. 60; *McCabe v. Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151; *Mitchell v. U. S.*, 313 U. S. 80; *Shelley v. Kraemer*, 334 U. S. 1. If the Constitution stays the hand of the state when it seeks to enforce *private* restrictive covenants, can the state enforce *public* acts which offend the Fourteenth Amendment? The State should not be permitted to employ the courts to enforce its own restrictive covenants. See Brief of Department of Justice in *Henderson v. U. S.*, No. 25, October Term 1949, Supreme Court of the United States.

Segregation is a cancer which has eaten at the fiber of economic and political democracy in America. It has made a mockery of professions of morality and religious brotherhood; warped minds and bodies have been the price paid for this barbarism. The world has derided our pretensions as defenders of democracy pointing with scorn at our institution of segregation. What can our answer be when one of the 48 states can arrest and convict young boys and girls, on the sole ground of differing pigmentation, for the high crime of playing tennis together on public courts?

If this be shocking, what must be said of the dangerous doctrine that Americans, exercising their constitutional rights of assembly, and of press and speech, in protest

against grievances, may be branded as criminal conspirators to disturb the peace? And this when there is neither evidence of nor conviction for actually disturbing the peace or acting disorderly. These constitutional rights become mere sham, to be exercised only if not offensive to the constituted authorities. As stated by Judge Markell of the Court of Appeals of Maryland, in his dissent:

> "A right that cannot be exercised is not a right. A constitutional right that can be exercised, by unpopular persons in an unpopular cause, not at all or only in silence and in silence and in solitude, is a mockery of the Constitution and of free government."

Nor can it be validly argued that inviting arrest to test the legality of a questionable "policy" constitutes the crime of criminal conspiracy to disturb the peace. The traditional way to test a disputed right is to exercise it. *Beal v. Missouri Pacific R. Co.*, 312 U. S. 45, 49; *Douglas v. Jeannette*, 319 U. S. 157; *Thomas v. Collins*, 322 U. S. 516.

Petitioners and others assembled at the tennis court to conduct a tennis tournament as an act of protest against a grievance, the "policy" of the Park Board. Circulars were distributed, the press notified and play attempted — all in the clear light of day. Certainly, this could not be even remotely considered as a criminal conspiracy. Contrast this "criminal" conduct with the decision of this Court in *Terminiello v. City of Chicago*, 69 S. Ct. 894, and the brazen violation of the constitutional rights of the petitioners is apparent. But not only the petitioners have suffered. The affirmance by the Court of Appeals of Maryland is grim warning to the citizens of Maryland to refrain from peaceable exercise of their constitutional rights of assembly, press and speech. A protest meeting for higher unemployment benefits, for public housing, against discrimination, or on any

controversial issue, can become transformed into a conspiracy to disturb the peace.

The Court of Appeals of Maryland refused to determine if the constitutional rights asserted by the petitioners had been violated, and refused to examine the facts and law to make such determination. Its reason was that it was powerless to do so because the Maryland Constitution made the trial court the final judge of the law and facts in criminal cases. The settled law of the U. S. Supreme Court is clear that where it is asserted that a person has been deprived by a court of a fundamental right secured by the Constitution, an independent examination of the facts by this court is required to be made.

Norris v. Alabama, 294 U. S. 587;
Pierre v. Louisiana, 306 U. S. 354, 358;
Chambers v. Florida, 309 U. S. 227, 228, 229;
Lisenba v. California, 314 U. S. 219, 237, 238.

The high court of Maryland mistakenly subordinated the Federal Constitution to the Maryland Constitution and its own precedents. It was in duty bound to examine the record and to decide whether the petitioners' constitutional rights had been violated by the trial court which had convicted them for voluntarily assembling to play interracial tennis and for meeting to protest their grievance against the alleged ban on interracial sports activity in the public parks.

The veil of judicial legerdemain below must not be allowed to obscure the shameful wrong done the petitioners. We urge the Court to declare that Negro and white citizens can join together in wholesome recreational activity on public facilities without molestation. We urge this Honorable Court to reaffirm the inalienable rights of assembly, of press and of speech. The immediate grievances in

this cause are the petitioners'. The words of this Honorable Court on the questions raised in this petition can hearten all who believe in democracy.

Respectfully submitted,

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STATE OF MARYLAND,
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BRIEF IN SUPPORT OF PETITIONER FOR WRIT OF CERTIORARI

THE OPINION BELOW

The majority opinion of the Court of Appeals of Maryland and the dissenting opinion of Associate Judge Charles Markell is reported in 69 A. 2d 674.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257(3) Title 28, U. S. C. A. The Court of Appeals of Maryland has decided a case

> "where * * * title, right, privilege, or immunity is specially set up or claimed * * * under the Constitution * * * of the United States * * *"

Judgment was entered in this case by the Court of Appeals of Maryland on November 17, 1949.

STATEMENT OF THE CASE

On July 11, 1948, a number of persons were arrested at Druid Hill Park in Baltimore City because they refused to stop play, on order of the Park Police, in an interracial tennis tournament then in progress on the tennis courts of the park. The proper permits had been obtained previously as required by the Park Administration for the use of these courts (App. p. 79).

Previously, an organization interracial in its constituency, the Young Progressives of Maryland, had notified the Bureau of Parks that it desired to have an interracial tennis tournament in the park (App. p. 43). The Superintendent of Parks replied that this request could not be granted because the Park Board had a "policy" of segregation (App. p. 45). The only official evidence of such a policy was a loose reference to a minute of one of the meetings of the Park Board; the record of the minute was never offered in evidence (App. pp. 46, 51, 54). There was no rule or regulation or ordinance or law decreeing segregation in the public parks in Baltimore City. Later a group of citizens met with the Superintendent of Parks, on July 8, 1948, and again made the request which was turned down for the same reason (App. pp. 46, 47). The group then told the Superintendent that because they felt that they had the legal and constitutional right to engage in interracial sports activities in the public parks, they planned to go ahead with the tournament on July 11, 1948 (App. pp. 46, 47).

The organization of Young Progressives then made arrangements for a tournament with the Baltimore Tennis Club, a private local sports organization made up of members of the Negro race (App. p. 110). They advertised the tournament in the form of leaflets (App. pp. 91, 92). Their purpose was to test the legality of the aforementioned segregation policy of the Park Board and to bring this

policy to the attention of the general public so as to win its favor and support (App pp. 95, 96). They planned to play the tournament in a peaceful and orderly manner, and to continue to play until such time as they should be actually placed under arrest, if an arrest were to occur, in order effectively to test the policy's legality (App. pp. 79, 80). Their intention was to submit peaceably to such arrest (App. pp. 80, 82, 112). They had sought and received legal advice in advance concerning this undertaking (App. pp. 87, 101).

On July 11, the players took the courts for which they had received permits from the proper officials of the park authority and played peaceably and without any incident for about 15 minutes (App. pp. 82, 113). At that time the Park Police arrived and requested the players to leave, citing the segregation policy expressed in the form of a letter from the Park Board to a third party (App. pp. 58, 82). The players refused to leave unless they were placed under arrest and so informed the Park Police officials (App. p. 82). The Park Police then left and conferred with the Superintendent of Parks who was waiting nearby and who instructed the Park Police to make the arrests (App. pp. 64, 65). About 15 minutes after the first visit, the police returned (App. p. 82). On this second trip, the Park Police had reinforced themselves with city policemen, as if by a prearranged plan (App. p. 58).

There were onlookers watching the tournament, who were separated from the players by a metal wire fence which surrounded all of the courts (App. p. 66). There were about 150 of these onlookers and they were orderly and were made up of men, women and children, including many Sunday picnickers (App. pp. 55, 56).

When the arrests were finally made, the players submitted peaceably thereto (App. pp. 66, 149). A few of the players were alleged to have sat down on the courts,

but the evidence disclosed that only one of the Defendants was actually charged with sitting down, namely Irvin Winkler (App. pp. 157). Mr. Winkler testified that he sat down because he was not told that he was under arrest but was merely ordered off the tennis court, and that he intended to stay until arrested in order to test the Board policy, and he so indicated to the arresting officer (App. p. 167). This was corroborated by James E. Roberts, a law student. After the players were arrested and when in the Northern Police Station, some were improperly threatened and abused by the police.

Five of the seven Defendants who were convicted, namely Leonard Collidge, Warren L. Vestal, Regina Silverberg, Charles M. Swann and Harold Buchman were spectators. The substance of the police testimony at the Northern Police Station, at the time of the arrests was that there were some protests from the spectators but no actual resistance or disorder.

Subsequently thereto, on July 14, 1948, Defendants were indicted by the Baltimore Grand Jury in two sets of indictments alleging violations of certain park rules, which required obedience to orders from the Park Police on pain of a small fine (App. pp. 3-12). It was not until two months later, in September, 1948, that the State procured a new set of indictments, charging riot, conspiracy and other offenses and joining, for the first time, the Defendant, Harold Buchman, a lawyer, who had acted as friend and legal counsel to the other Defendants.

At the time of the trial in the Criminal Court, the police officers testified on behalf of the State and embellished considerably upon their original testimony in the police station (App. p. 468). Even then, the embellishment of the story as told by the police took the form of alleged expletives, but no actual violence. In point of fact, at the

police court hearing, the Defendants were charged only with violating the Park Rules or policy affecting segregation. One charge of resisting arrest by the Defendant, Swann, was dismissed in the police station by the Police Magistrate. It was conceded by the police that no order was ever given to the crowd to disband (App. p. 71).

The only testimony of violence at the Criminal Court trial was that involving the Defendant, Swann, a spectator, but even he was charged with a mere threat, namely raising his fist when arrested by the police. However, the testimony is uncontradicted that the arm he raised had been operated on, four days before, for a vein tumor (App. pp. 158, 159). He testified he raised his hand to protect it because the police were hurting it when they arrested him (App. p. 158). Spectators Vestal and Collidge were accused of asking to be arrested when the others were placed under arrest (App. pp. 441-451, 453-457). The spectator, Mrs. Silverberg was accused of protesting vehemently, but verbally, against the arrests (App. pp. 141-142, 143). Harold Buchman, an attorney, was accused of advising the players not to leave the tennis courts when the police ordered them to. However, Captain Gaeng of the Park Police admitted that the players may have said they would leave when arrested (App. p. 67). The testimony of the Defendants denied any disorder or resistance or incitement of any kind. This was corroborated by numerous persons present, many of whom were mere observers and who are not Defendants (William A. Graham, a student; Dr. Roy Johnson, a dentist; Martha Coffee, a student; Reginald Willis, baggage trucker; Dr. J. E. T. Camper, physician).

A step by step picture account of the whole episode in the park was placed in evidence by the defense, the said pictures having been taken by an amateur photographer, William A. Graham, revealing the orderly character of the tennis players and the spectators.

The testimony was uncontradicted that interracial activity in many different sports in public facilities in Baltimore City is frequent and is accepted (App. pp. 47-50, 118-119, 171). It was stipulated to by the State and the Defendants that of ten public parks distributed in different geographical locations in Baltimore City having tennis courts, the Park Board has reserved nine for Whites and only one for Colored persons—the latter being located in Druid Hill Park (App. p. 177). It was further stipulated that the Park Board has reserved 108 courts for Whites and only 8 for Colored persons (App. p. 177). In proportion to population this means that less than 7% of the courts were reserved for colored persons as compared with those reserved for Whites. The Colored population in Baltimore City is roughly 20% of the total (App. p. 176).

The State, over the vigorous protest of the Defendants, proceeded first with the trial on the conspiracy indictment. It was charged by the Defendants, and not contradicted by the State, but ignored by the Court, that this was done in order for the State to avoid the issue of the legality of the Park Rules, the violation of which constituted the basis for the entire series of criminal prosecutions. As has been stated before, the trial court then acquitted all of the Defendant except 7 white persons who were found guilty of riot and conspiracy to disturb the peace. The State then stetted the other counts, over objection of counsel for the Defendants, who sought a ruling on the charge that certain park rules had been violated, involving the so-called segregation policies of the Park Board. On a motion for new trial before the Supreme Bench of Baltimore (nine Judges sitting), the motion for new trial on conviction for the offense of riot was granted. The motion was denied, however, with respect to the conviction for conspiracy to disturb the peace. Two of the Judges, Sherbow and Niles, dissenting, held that the Defendants were guilty of no

crime, and that there was no law, rule, or regulation against interracial athletic activity in the public parks, and that the defendants could properly test the validity of the vague segregation "policy" by an arrest. On appeal to the Maryland Court of Appeals, the highest appellate court in Maryland, consisting of six judges, the conviction was affirmed on the ground that its own precedents precluded examination of the facts and the law. One Judge, Charles Markell, wrote a vigorous dissent, holding that the Defendants were properly exercising their constitutional right of freedom of association in playing tennis together and were properly exercising their basic constitutional rights of freedom of speech, press and assembly to protest against the park board "policy" of segregation. In his dissent, Judge Markell, bitterly decried the practice of using judicial power to destroy the personal liberties of citizens.

ERRORS RELIED UPON

I. The Constitutional Rights of the Petitioners under the First and Fourteenth Amendments to the Federal Constitution were abridged by their Arrest and Conviction on the Charge of Criminal Conspiracy to Disturb the Peace:

   A. because of their act in playing interracial tennis on a public park tennis court in the City of Baltimore, in the face of an alleged ban by officials of the City of Baltimore against such interracial activity, and

   B. because of their acts in assembling to protest the alleged ban and in inviting the public by circulars and word of mouth to assemble for this purpose.

II. The Court of Appeals of Maryland erred in its Refusal to Determine if the Constitutional Rights Asserted by the Petitioners had been Violated, and in its Refusal to Examine the Facts and Law to Make such a Determination.

ARGUMENT

I.

The Constitutional Rights of the Petitioners under the First and Fourteenth Amendments to the Federal Constitution were abridged by their Arrest and Conviction on the Charge of Criminal Conspiracy to Disturb the Peace:

A. because of their act in playing interracial tennis on a public park tennis court in the City of Baltimore, in the face of an alleged ban by officials of the City of Baltimore against such interracial activity, and

B. because of their acts in assembling to protest the alleged ban and in inviting the public by circulars and word of mouth to assemble for this purpose.

It was undisputed that there was no law, ordinance, rule or regulation imposing segregation in the use of public sport facilities in the parks of Baltimore City. It was admitted by the State that there is no such rule or law pertaining to interracial tennis playing on the public tennis courts (App. 53).

It cannot be argued that there was a recognized or uniform practice of segregation in the use of public sports facilities in Baltimore City. The record is uncontradicted that professional football and baseball games have been and are regularly played on a non-segregated basis in the Stadium which is owned, controlled and supervised by the Park Board (App. pp. 47-50). In the very park where the incident occurred involved in this case, interracial activity in sports and recreation has been widespread. There has been use of so-called white tennis courts by Negro players in the presence of park police in Druid Hill Park (App. pp. 118, 119, 171). In sports generally in Baltimore City, there has been and is a general pattern of non-segregation in

sports participation, as for example in professional baseball and football (App. pp. 47-50). In the light of such facts, it cannot be contended that although there was lacking a specific law imposing segregation in the public parks, there was a practice to this effect. Nor can it be argued successfully that there was a policy to this effect. The Board thought so little of the validity of this "policy" that it did not print this "policy" in its most recent rule book, printed in 1948, which contained all of the rules of the Board (App. pp. 53, 54). The prosecution for the use of the tennis courts by the Defendants, therefore, was based on the arbitrary, ad hoc, determination of bureaucratic officialdom, whose caprice and racial bigotry have become the foundation for criminal prosecution.

Is citation of authority necessary to assert that prosecution for alleged violation of a non-existent criminal provision cannot be valid? A statute which is so vague that persons of ordinary intelligence must necessarily guess its meaning and differ as to its application has been held to violate constitutional guarantees of due process of law, Winters v. New York, 333 U. S. 507. What can be said of an amorphous "policy", authentication of which can only be made by reference to an obscure notation in the minute books of the Park Board, a policy which was not uniformly and consistently enforced, but was, on the contrary, more honored in the breach than in the observance. Furthermore, the exact nature and text of the "policy" was never made known in the record and is unknown in fact. Does the "policy" forbid any form of interracial sports? It was admitted that not all races are affected by this "policy" (App. p. 51). Nor are nationality groups included in the proscription (App. p. 52). Which races and under what circumstances does the ban apply? The "policy" does not say. Does the policy forbid persons of the white and Negro

races from voluntarily participating in sports on public facilities? Does the policy make an exception where the Baltimore stadium is concerned? What is the proscription of the Park Board and where is the line drawn? Again, what penalty, if any, is provided for breach of the "policy"? All of these questions belie the validity of the "policy".

Perhaps the best evidence of the ephemeral quality of the so-called "policy" was reflected in the unwillingness of the State to prosecute its alleged violation. Apparently convinced that conviction could not be obtained on the ground of violation of park rules banning interracial athletics, the State nevertheless determined to wreak its vengeance on citizens courageous and principled enough to assert that the Constitution extends its benevolence to all. The sweeping weapon employed since feudal times to oppress innocent citizens—conspiracy—was resurrected.

As stated by Judge Markell in his dissent below:

> "As to the appellants' constitutional right to play interracial tennis, the opinions of the judge at the trial and of the majority of the Supreme Bench on motion for new trial; apparently do not question—and the evidence does not warrant questioning—the statement and conclusion in the dissenting opinion of Judges Niles and Sherbow: "The basic fact is that there was no law, rule, or regulation of the Park Board prohibiting interracial tennis; there was only a minute in its records adopting a 'policy' of segregation. The defendants therefore in planning the tennis match did not conspire to commit an unlawful act, nor in playing tennis did they commit an unlawful act * * *." (*Winkler et al. v. State*, 69 A. 2d 674, 680.)

The record shows that of ten public parks distributed in different geographical locations in Baltimore City having tennis courts, the Board had reserved nine for whites and only one for colored persons. The Park Board had actually

reserved only 108 for whites and only eight for Negroes. In ratio to population, this meant that less than seven percent were reserved for members of the Negro race, whereas the Negro population in Baltimore City is about 20 percent of the total.

There can be no question, therefore, about the facilities being unequal for Negro persons as compared with those for whites. First of all, there is a serious deficiency in the number of tennis courts set aside for members of the colored race. Secondly, geographical convenience is utterly disregarded in providing tennis courts for Negroes in Baltimore City. The law is well established that facilities for the two races must be equal, if it is sought to impose segregation.

Therefore, because the "rule" did not comply with the basic constitutional requirements, it was void and of no effect. The arrests and convictions made in pursuance of a void rule must fall.

Morgan v. Virginia, 328 U. S. 373, 376;
Thomas v. Collins, 323 U. S. 516.

The exercise by a city agency of powers affecting constitutional liberties of citizens is subject to the same constitutional limitations as the exercise of powers by the state. *Hague v. C. I. O.,* 101 F. 2d 774, modf'd on other grounds 307 U. S. 496; See also *San Francisco Gas Co. v. San Francisco,* 189 F. 493; Ex parte Walrod, (Okla. 1941) 120 P. 2d 783.

It is the appellants' position also that even if the Court were to hold that the facilities provided were equal, that segregation in the field of sports in public facilities, the subject of this appeal, is unconstitutional. In the case of *Lopez v. Seccombe, Mayor of the City of San Bernardino, et al,* 71 F. S. 769, the United States District Court ruled

that where persons of Mexican descent were excluded from a public park, recreational grounds, swimming pool and bath house by the City officials of San Bernardino because of their race and ancestry, such exclusion was discriminating and constituted a violation of the equal protection clause of the 14th Amendment.

The mere making of such a rule by the Park Board, does not endow it with legal sanctity. The law is well settled that where constitutional rights are involved, a statute or ordinance does not bear a broad presumption of constitutionality. *U. S. v. Caroline Products Co.*, 304 U. S. 144; *Thornhill v. Alabama*, 310 U. S. 88, 95-96.

The record shows that the only persons whom the Park Board sought to single out in this case for segregated treatment were the Negro people (App. pp. 51-52). Integrated sports activity is entirely permissible, according to the Park Board, for other groups and segments of the population in Baltimore City. This is discriminatory treatment against the Negro people and therefore the policy is unconstitutional and void. If a law or rule discriminates unjustly between persons in similar circumstances material to their rights, such a denial of equal justice violates the "due process" and "equal protection" clauses of the Federal Constitution. All governmental classifications must be based upon a significant difference having reasonable relationship to the subject matter of the law else such discriminations are illegal.

Southern Railway Co. v. Greene, 216 U. S. 40, 417;

Gulf Colorado & Sante Fe Railway Co. v. Ellis, 165 U. S. 150, 155;

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 559, 560;

Atchison Topeka & Sante Fe Railway Co. v. Vosburg, 238 U. S. 56, 60, 61;

Royster Guano Co. v. Virginia, 253 U. S. 412, 416, 417;
Smith v. Cahoon, 283 U. S. 553, 556, 567;
Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U. S. 459, 462, 463;
Colgate v. Harvey, 296 U. S. 404, 422, 423;
Mayflower Farms v. Ten Eyck, 297 U. S. 266, 274;
Skinner v. Oklahoma, 316 U. S. 535, 541, 542;
Louisville Gas & Electric Co. v. Cohen, 277 U. S. 32, 37;
Quaker City Cab Co. v. Pennsylvania, 277 U. S. 389, 400;
Powers Mfg. Co. v. Saunders, 274 U. S. 490, 493;
Truax v. Corrigan, 257 U. S. 312, 337;
Cotting v. Kansas City Stock Yards Co., 183 U. S. 79, 106, 107.

Recent and past decisions of the U. S. Supreme Court have dealt the institution of segregation very severe blows, and the present currents of our jurisprudence make its continuation legally untenable. Following the Civil War, the bloody victory won on the battlefields was translated into law in the form of the 13th, 14th and 15th Amendments which liberated the Negro. The 13th Amendment abolished slavery and involuntary servitude. The 14th Amendment created rights of national citizenship and sought to eradicate class distinctions and to create a democracy where all persons would be considered politically and legally equal regardless of race, color or previous condition of servitude. The 15th Amendment guaranteed the right to vote regardless of race, color or previous condition of servitude. The Committee hearings and the debates in Congress immediately preceding the adoption of these amendments indicate quite clearly that the purposes behind them were twofold: (1) to make the Bill of Rights applicable to the states; (2) to write into the Constitution the new Congressional theory of civil rights guaranteed by

national citizenship. There was no real question that the 14th Amendment was to apply to individuals as well as to state governments in the protection of civil rights. (See Hearings of the Joint Committee on Reconstruction of the 39th Congress and the debates in the 39th Congress on the Freedmen's Bureau Bill and the Civil Rights Bill. (House Report #30, 39th Cong. 1st Sess.; Senate Reports, Senate Docket 711, 63rd. Cong. 3rd Sess.; 36 Cong. Globe 1090 et seq.; 44 Cong. Globe App. 84 et seq.).

However, there was a retreat from the principles by the Supreme Court. (See: *Slaughterhouse Case,* 16 Wall. 36, 21 L. Ed. 394 (1873), in which the privileges and immunities guaranteed to citizens in the 14th Amendment were stripped of their promise to the people of basic civil rights; *U. S. v. Cruikshank,* 92 U. S. 542 (1875), where the equal protection clause of the 14th Amendment was made into a hollow shell by denying relief to Negroes who were intimidated from conducting a peaceful meeting; *U. S. v. Harris,* 106 U. S. 629 (1883) in which the Ku Klux Act was rendered unconstitutional thereby freeing lynchers of a Negro; *Civil Rights Cases,* 109 U. S. 3 (1883) where the Civil Rights Act of 1875, which forbade individuals from denying the equal enjoyment by the white and Negro races of transportation convenience, amusements and accommodations, was held illegal.)

It was in this background in the 90's that the states in the South proceeded to enact "White Supremacy" laws inflicting on the Negro people the terrible scourges of segregation and disfranchisement. And it was in this dark era that the Supreme Court decided the case of *Plessy v. Ferguson,* 163 U. S. 537 (1896) which laid down the doctrine that segregation is legal providing equal facilities are provided for the two races.

The equalitarian character of the 14th Amendment was not entirely lost on the U. S. Supreme Court, and by an enlightened series of decisions the brightened legal corridor remains open down to today. In *Washington, Alexandria and Georgetown R. R. Co. v. Brown,* 17 Wall. 409, 453 (1873) the court outlawed the practice of separate cars for negro passengers on a railroad from Virginia to Washington, D. C., where the Congress had provided in its grant of a charter to the company that it should not exclude persons from its cars on account of color. In the cases of *Strauder v. W. Va.,* 100 U. S. 303; *Ex parte Va.,* 100 U. S. 339; *Virginia v. Rives,* 100 U. S. 330 and *Neal v. Delaware,* 103 U. S. 370, it struck down the practice of excluding Negroes from juries. In the *Neal* case, *supra,* the Court decried discriminations against the Negro people which would reduce them "to the condition of a subject race".

In 1917, the Court rendered the important decision in *Buchanan v. Worley,* 245 U. S. 60, in which it ruled unconstitutional an ordinance of the City of Louisville which forbade Negro occupancy of residential property in a predominantly white area and vice versa. The ordinance followed the pattern of attempting to place equal burdens on both white and Negro buyers of realty and was predicated on the desirability of the separation of the races. The ordinance was supported by the argument that it would prevent race riots but the Court answered saying that this was no legal justification for the violation of one's constitutional rights. The Court was unequivocal in stating that a State could not extend the use of its police power to the point where it would override the civil rights of its citizens, even where it claimed such use in the public interest.

In the case of *McCabe v. Atchison, T. & S. F. Ry. Co.,* 235 U. S. 151 (1914), the Court pronounced a doctrine which was the forerunner of a revolt against the separate but

equal dogma of *Plessy v. Ferguson.* The Court rejected the old segregation shibboleth in a case involving the constitutionality of segregation in interstate transportation, to the extent that it held that the constitutional guarantees are not made to a particular racial group or to any class of persons but are made to *individual* persons. Under the proportional equality device it is quite conceivable that a Negro person may be unable to use pullman facilities set aside for his race, while there is still space available set apart for whites, due to the variations of demand. When that occurs, the Court held that the Negro person who is turned away is illegally discriminated against.

The Court reaffirmed this break-away position from *Plessy v. Ferguson* in the later case of *Mitchell v. U. S.*, 313 U. S. 80, in which it reiterated that Constitutional rights are *personal* and not racial. This case also involved an interstate carrier.

In 1938, the Court decided *Missouri ex rel. Gaines v. Canada,* 305 U. S. 337, and held that Missouri could not exclude Negroes from its law school where it had only one law school, and that the constitutional requirements of equal protection of the law were not satisfied when a Negro was compelled to rely upon out-of-state aid to get the education furnished for whites within the state. This case is also a severe blow at the *Plessy v. Ferguson* doctrine of "separate but equal" because it critically treated the suave pretension of equality and compels a result which makes it almost imperative that Negroes be admitted to schools of higher learning without segregation.

In the recent case of *Takahashi v. Fish & Game Commission,* 334 U. S. 410, the Court ruled that it was illegal for a state to discriminate against a person of the yellow race in engaging in a useful occupation. In the case of *Oyama*

v. California, 332 U. S. 633, 640, 646, the Court made the same ruling with respect to ownership of property.

The most recent cases in revolt against the separate but equal doctrine occurred in a series of cases involving restrictive covenants. These are:

Shelley v. Kraemer, 334 U. S. 1;
Hurd v. Hodge, 68 S. Ct. 847;
McGhee v. Sipes, 68 S. Ct. 836;
Uricolo v. Hodge, 68 S. Ct. 847.

The above cases hold that while it may be legal, technically speaking, for persons to agree to discriminate against members of another race in the alienation of realty through the device of restrictive covenants, the Constitution stays the hand of the state when it seeks to enforce such private agreements. In the *Shelley* case, *supra,* which involved covenants to exclude Negroes from the ownership or occupancy of real estate, the Court held that the constitutional rule of equality is *personal* and that the denial of such a right to whites under similar circumstances will not validate the discriminatory act against the Negro. Chief Justice Vinson, speaking for the Court, said:

> "The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights."

It can therefore be said that the U. S. Supreme Court has about completed an historical cycle in the interpretation and application of the Fourteenth Amendment with respect to state action enforcing segregation on fellow-Americans of the Negro race. The cycle commenced with the legitimation by the Court of the discriminatory practice by the states of segregation of Negro citizens and the negation of the equality philosophy of the Fourteenth Amendment. This was done, however, with the aid of the separate but equal

device which was at once impossible of achievement and a subterfuge for treating the Negro citizens as an inferior people. The basic motivation for this pernicious treatment of the Negro was economic because history has shown that the degrading of a people by a dominant group in society is done to exploit them. This was true with respect to the slavery of the Negro in the South before the Civil War, and segregation is one aspect of the status imposed upon the Negro after the Civil War by similar exploiting forces—this status is that of second class citizenship. The other end of the cycle is the attitude of true equality for the Negro citizen as the emancipation amendments intended. The Negro citizen should now be recognized by the Court as an American citizen with the same civil rights and dignity as any other American citizen. Segregation of the Negro cannot survive, therefore, so far as the law is concerned.

The Report of the President's Committee on Civil Rights (U. S. Government Printing Office, 1947) at page 166 reads as follows:

> "The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation."

It is significant that the Government, through its Solicitor General, has unequivocally adopted the position that segregation of the Negro people in any phase of American life is legally untenable and deleterious to the social and economic health of our nation. See Brief of the U. S.,

Henderson v. U. S., No. 25, October Term, 1949, Supreme Court of the United States.

In the case at bar there was involved the exercise of the right of freedom of asssembly by the defendants and the other persons who participated in the tournament or who congregated to watch the tournament. The U. S. Supreme Court has ruled that the guarantees of the Fourteenth Amendment incorporate the rights of the First Amendment, one of which is freedom of assembly. *Murdock v. Pa.*, 63 S. Ct. Rep. 870; *DeJonge v. Oregon*, 299 U. S. 353. The act of meeting together at public tennis courts to participate in a tennis tournament together is an act of assembly. The act of the spectators in convening to watch the tournament is an act of assembly. The very tournament in this case constituted an act of protest against a grievance, namely, the obnoxious "policy" of the Park Board forbidding persons to participate in sports together on public facilities because of the color of their skin. To effectuate the protest, circulars were distributed advertising the tournament and protesting against the aforesaid ban. There was involved then in this case the sacred and traditional American liberties, namely, the freedoms of speech, press and assembly. It is precisely because these fundamental and precious American concepts were invoked by the defendants and were vigorously and ruthlessly suppressed by a governmental agency, namely, the Park Board, that this case assumes an unusual importance, and merits the closest scrutiny to guarantee the protection of the defendants' rights. The act by the Park Board and the park police of preventing the continuation of the tennis tournament because of the mixed racial character of the participants was analogous to the acts of city officials in the case of *Hague v. C. I. O., supra,* to prevent the assembly of persons because of their political or social views. (See also *Sellers v.*

Johnson, 163 F. 2nd 877.) The disapproval of this type of assemblage by the Park Board could not legally justify the denial of the civil rights of the defendants in this case. The simple edict of the Park Board does not grace it with any special dispensation in the law, and an abuse of authority is still an abuse of authority and therefore constitutes a void act, whether the governmental agents acted in good faith or out of mistake. Thus the arrest and conviction of the defendants were nevertheless void. See *San Francisco Gas Co. v. San Francisco*, 189 F. 943.

The prosecution urged that the policy was justified in order to avert public disorder, which might ensue where the Negro and white races participate jointly in a sports program in public facilities. This point is treated at greater length later in this brief but suffice it to say that such an argument has been repeatedly rejected by the United States Supreme Court, where it is used as a justification for the suppression of civil rights.

> *Terminiello v. City of Chicago*, 69 S. Ct. Rep. 897;
> *Buchanan v. Worley*, 245 U. S. 60.

The normal way to test a disputed right is to exercise it. *Beal v. Missouri Pacific R. Co.*, 312 U. S. 45, 49; *Douglas v. Jeannette*, 319 U. S. 157; *Thomas v. Collins*, 322 U. S. 516; *Morgan v. Va., supra.* There is no fixed limitation on the number of persons involved in order to have an orderly test of a law by inviting arrest. The suggestion in the majority opinion of the Supreme Bench of Baltimore City that the use of more than 2 players to make a test would mean a criminal intent is without support in the law. It is quite obvious that this statement was prompted by that Court's disapproval of the method of inviting arrest to test a law's validity. It suggested instead the use of a proceeding in equity, such as injunction. However, that court's

choice in this matter is not binding as law, and it is submitted that that court erred in its ruling. Certainly a large number of persons was involved in the cases of *Thomas v. Collins, supra,* and *Morgan v. Virginia, supra.* Finally, the ruling of the Court of Appeals contravenes the latest pronouncements of the U. S. Supreme Court in the case of *Terminiello v. City of Chicago, supra.* In this last named case, the high court ruled that no offense is made out where a person while exercising a civil right may tend to cause disorder. An opposite ruling would mean the end of the effective exercise of civil rights. This is discussed in further detail under the next point. However, as is often the case in civil right issues, the record shows that there was no disorder except that which was made by the police in making the arrests.

The Supreme Court of the United States has been zealous to guard the guarantees expressed in the Bill of Rights against assaults by State government, as well as by federal authorities. The latest expression of the Court appears in the case of *Terminiello v. City of Chicago, supra.* Mr. Justice Douglas said:

> "The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in DeJonge v. Oregon, 299 U. S. 353, 365, it is only through free debate and free exchange of ideas that government remains responsible to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes. Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices

and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, Chaplinsky v. New Hampshire, supra, pp. 571-2 is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious and substantive evil that rises far above public inconvenience, annoyance or unrest. See Bridges v. California, 314 U. S. 252, 262; Craig v. Harvey, 331 U. S. 367, 373. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts or dominant political or community groups."

In this case, the petitioner delivered an impassioned and bitterly provocative speech before a large audience which was sprinkled with hecklers, and when surrounded by picketers militantly milling about the hall where the meeting was being held, he was convicted under an ordinance which forbade persons from speaking under circumstances which would encourage disorders and invite disturbances of the peace. It was held that the proof in the case did not mount up to a clear and present danger of a substantive evil, under which circumstances basic liberties might be curtailed. The test of inherent or reasonable tendency to create disorders by the exercise of the civil right involved was rejected by the U. S. Supreme Court.

As stated by Judge Markell in his dissenting opinion in the Maryland Court of Appeals:

"The opinions of the majority of the Supreme Bench and of the trial judge show that appellants were convicted for exercising not only one constitutional right, to play interracial tennis, but several constitutional rights, viz., the right to play interracial tennis and also the right of freedom of speech and the press and the right of peaceable assembly, in distributing the circular and otherwise inviting attendance at the tennis tourna-

ment. In those opinions the burden of the condemnation of appellants was (a) distribution of the circular, (b) invitation of spectators, (c) exercise of the constitutional right by more than two players (one white, one colored), the minimum number, sufficient (if they were arrested) to furnish a basis for a judicial 'test' of the right, and (d) the exercise of the right at all without first establishing it by suit for injunction or mandamus—all after 'warning' that 'trouble might arise from the gathering if they attempted to play tennis'. Distribution of the circular was an exercise of the freedom of speech and the press and the right of peaceable assembly. The circular had no tendency to—much less showed any intention or created any 'clear and present danger' of—'defiance of law and order' or assembly to disturb the peace. It does not incite to, or suggest, resort to force or violence but only legal or political action to a legal and political end. The fact that the purpose of assembling was political as well as recreational only emphasizes the right of peaceable assembly and freedom of speech and the press. This was not the first time political action was ever taken on a tennis court—as was known before the First Amendment was ratified or proposed."

II.

The Court of Appeals of Maryland erred in its Refusal to Determine if the Constitutional rights asserted by the Petitioners had been Violated, and in its Refusal to Examine the Facts and Law to make such a Determination.

The Maryland Court of Appeals in its majority opinion avoided a decision on the constitutional issues involved in the case by asserting that it was powerless to examine into the facts and the law. It supported its position by citing its own precedents on this point. It is patently obvious that the Maryland Court of Appeals, in effect, sought to subordinate the Bill of Rights of the Federal Constitution to its own judicial proclamations. Its precedents in this con-

nection were in turn its interpretations of the Maryland Constitution (Article 15, Section 5), which endows the juries in Maryland in the trial of criminal cases with the power to pass on both the facts and the law involved. This legal syllogism would mean the subordination of the Federal Constitution and the Amendments thereto to the Maryland Constitution. This offends our basic structure of government and is in direct contravention to the settled law of this Court. The Federal Constitution and its Amendments are the supreme law of the land.

Article 6, Const. of the U. S.;
McCulloh v. Md., 4 Wheat 316, 426;
Cohen v. Virginia, 6 Wheat 264;
Martin v. Hunter, 1 Wheat 304;
Tennessee v. Davis, 100 U. S. 257;
Md. v. Soper, 270 U. S. 9.

As was set forth by Judge Markell in his dissent below:

> "So far as the Constitution of the United States is concerned, Maryland need not provide any appeal at all. But if and when it does provide an appeal the appellate court and judges, like all other Maryland courts and judges, are bound by the Constitution of the United States, 'anything in the Constitution or Laws of this State to the contrary notwithstanding'. Maryland cannot exempt them from this obligation."

In "The Tennis Court Case" rights and immunities under the Federal Constitution were asserted by the Petitioners, namely; that they were arrested for exercising the freedoms of assembly, speech and press. It was further asserted that the Park Board "policy" violated the equal protection and due process clauses of the Fourteenth Amendment. It was the constitutional duty of the Maryland high court to review the facts and the law and no State judicial precedent or State constitutional provision could avail the court to do otherwise. The U. S. Supreme Court has ruled that

where it is asserted that a person has been deprived by a court of a fundamental right secured by the Constitution an independent examination of the facts by this Court is required to be made.

Norris v. Alabama, 294 U. S. 587;
Pierre v. Louisiana, 306 U. S. 354, 358;
Chambers v. Florida, 309 U. S. 227, 228, 229;
Lisenba v. California, 314 U. S. 219, 237, 238.

In Lisenba v. California, supra, this Court stated that the performance of its duty to make that examination of evidence "cannot be foreclosed by the finding of a court, or the verdict of a jury, or both". It is submitted that the Maryland Court of Appeals erred in refusing to examine into the facts and the law in this case because here the Petitioners asserted that they were deprived of basic constitutional freedoms not only by the Park Board but also by the trial court in Maryland which convicted them for the exercise of these freedoms.

CONCLUSION

This case involves the right of persons to engage in tennis playing upon the public parks regardless of the color of their skin. Because certain persons attempted to do this in Baltimore City they were jailed.

The Maryland courts were used to brand these people as criminals. What these people did was in the best tradition of sportsmanship and constituted the finest expression of the democratic way. Our highest court should undo the grevious wrong inflicted on these deserving people. This is particularly fitting when we now as a signatory to the United Nations Charter have pledged ourselves to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex,

language, or religion * * *" (Chapter 1, Art. 1, Sec. 3 of U. N. Charter).

Should the convictions stand, the ghetto wall between white and black will rise higher, the perpetuators of discrimination in public recreational facilities will rejoice, the building of amity among the peoples of the United States will receive a severe setback. Freedom of speech, assembly and press in Maryland, and elsewhere, will be curtailed as instruments for progress. Reversal of the convictions will be, on the other hand, a ringing affirmation of American fundamentals—that men and women of different races can, if they so choose, join in sport together in their public parks and that they may utilize their constitutional rights in the pursuit of progress.

Respectfully submitted,

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